

## REMARKS

### Summary of the Office Action

Claims 1, 2, 5-6, 15-17, and 21-23 have been rejected under 35 USC 102(b) as allegedly anticipated by U. S. Patent No. 6,071,305 to Brown et al. ("*Brown*").

Claims 7-8 have been rejected under 35 USC 103(a) as allegedly obvious over *Brown* in view of U. S. Application Publication No. 2002/0038146 to Harry ("*Harry*").

Claim 11, 12, 18 have been rejected under 35 USC 103(a) as allegedly obvious over *Brown* in view of U. S. Patent No. 5,972,027 to Johnson ("*Johnson*").

### Applicant's Response

#### **A. In the Claims**

Claims 1-23 are pending in the application. Claims 3, 4, 9, 10, 13, 14, 19, and 20 have been withdrawn from consideration. Claims 1, 12, 15, 23 have been amended. Therefore, upon entry of the present amendment, claims 1, 2, 5, 15-17, and 21 and 23 will be subject to examination.

Independent claims 1, 15, and 23 have been amended to recite that the multiplicity of pores is "disposed non-directionally about an exterior surface of the tubular member." Support for this recitation is found in the specification, e.g., at paragraph [0034] of the published application and at FIG. 6B-6C. Claim 12 has been amended to correct an informality.

Concerning the rejection under 35 U.S.C. 102(b), a claim is anticipated only if each and every element set forth in the claim is found, either expressly or inherently, in a single prior art reference. *Verdegaal Bros. v. Union Oil of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1087).

Amended claims 1, 15 and 23 are not anticipated by *Brown*, because *Brown* does not disclose, either expressly or inherently, each and every element set forth in amended claims 1, 15 and 23. In particular, *Brown* does not disclose that the multiplicity of pores is "disposed non-directionally about an exterior surface of the tubular member."

*Brown* teaches a directional drug delivery stent, which includes an elongated body having a cavity containing a biologically active agent. *Brown* explains at length that his invention

concerns a stent, in which the biologically active agent is directed to the area where an angioplasty was performed and does not elute into the blood stream. *Brown*, Abstract; col. 2, lines 16-52.

In different embodiments, the *Brown* stent is manufactured from a wire shaped like a coil (FIGS. 1-2) or like a web (FIG. 18). The biologically active agent is described as preferably disposed within a groove on the outer surface of the wire (FIGS. 1-4). In one embodiment, the groove is closed to form an asymmetric, essentially tubular member containing a biologically active agent that is eluted into the outer environment through pores disposed directionally on the thinner surface of the tubular member (FIG. 6).

In Applicant's invention, the pores may be disposed in any pattern. For example, paragraph [0014] of the published application states that the pores may be "spaced circumferentially about a lateral surface of the tube," and paragraph [0034] of the published application states that the pores "may be disposed circumferentially about an exterior surface of the tube." Please also refer to FIGS. 2B, 6C-6D, and 7B of Applicant's specification.

In particular, independent claims 1, 15, and 23 recite that the pores are disposed non-directionally. For at least these reasons, *Brown* cannot anticipate independent claims 1, 15 and 23 or the claims that depend thereon.

With regard to the rejections of claims 7, 8, 11, and 12 under 35 USC 103(a), none of claims 7, 8, 11, and 12 is obvious in view of the cited references, because the primary reference, *Brown*, expressly teaches away from the claimed invention, as shown above. See, for example, *Brown* at col. 2, lines 16-52.

For the foregoing reasons, the withdrawal of all rejections is respectfully requested.

#### **B. The Finality of the Office Action**

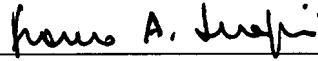
The Office Action of January 8, 2007 has been made final. Because the Examiner has introduced new grounds of rejection, and because the new grounds of rejection do not appear to have been necessitated by Applicant's amendment of the claims nor based on information submitted in an information disclosure statement, Applicant respectfully requests that the finality of the Office Action be withdrawn. MPEP 706.07(a).

**Conclusion**

In view of the foregoing amendments and remarks, Applicants submits that the present application is in condition for allowance and respectfully requests the timely issue of a notice to that effect.

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Respectfully submitted,



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